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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

13 CR 950 (JMF)

5 GARY DAVIS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 October 5, 2018
3:00 p.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13
14 APPEARANCES

15 GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York

16 MICHAEL NEFF

17 EUN YOUNG CHOI

Assistant United States Attorneys

18 BRAFMAN & ASSOCIATES

Attorneys for Defendant

19 MARC AGNIFILO

20
21 ALSO PRESENT: GARY ALFORD, IRS Special Agent

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1 (Case called)

2 MR. NEFF: Good afternoon, your Honor, Michael Neff
3 and Eun Young Choi for the government, joined at counsel table
4 by IRS Special Agent Gary Alford.

5 THE COURT: Good afternoon.

6 MR. AGNIFILO: Good afternoon, Judge Furman, Marc
7 Agnifilo, and I'm with my client, Gary Davis, who is present in
8 the courtroom.

9 THE COURT: Good afternoon to both of you.

10 I have been advised, Mr. Davis, you wish to change
11 your plea and enter a plea of guilty to a lesser included
12 offense of Count One of the superseding indictment, is that
13 correct?

14 THE DEFENDANT: That's correct, your Honor.

15 THE COURT: All right. Before I accept your guilty
16 plea I need to ask you certain questions to ensure that you are
17 pleading guilty because you are in fact guilty and not for any
18 other reason, to ensure that you understand the rights you
19 would be giving up by pleading guilty, and to ensure that you
20 understanding the consequences of a guilty plea. If there's
21 anything that you do not understand, please let me know so that
22 Mr. Agnifilo or I could explain it to you more fully. And if
23 at any point you would like to speak to Mr. Agnifilo for any
24 reason, just let me know and I will give you however much time
25 wish to speak with him. Do you understand that?

IA5TDAVP

1 THE DEFENDANT: I do, your Honor.

2 THE COURT: Before I proceed any further I will ask my
3 deputy to administer the oath to Mr. Davis.

4 (Defendant sworn)

5 THE COURT: You're now under oath, which means that if
6 you answer any of my questions falsely you may be subject to
7 prosecution for the separate crime of perjury. Do you
8 understand that?

9 THE DEFENDANT: I do, your Honor.

10 THE COURT: What is your full name?

11 THE DEFENDANT: Gary Patrick Davis.

12 THE COURT: How old are you?

13 THE DEFENDANT: 30 years old.

14 THE COURT: How far did you go in school?

15 THE DEFENDANT: Secondary school, which is just before
16 college.

17 THE COURT: Where was that?

18 THE DEFENDANT: Greystone, County of Wicklow, in
19 Ireland.

20 THE COURT: Have you ever been treated or hospitalized
21 for any type of mental illness?

22 THE DEFENDANT: Treated for depression.

23 THE COURT: How recently were you treated and what
24 kind of treatment did you receive?

25 THE DEFENDANT: I believe it was around 2016, and I

IA5TDAVP

1 was taking fluoxetine, prescribed fluoxetine.

2 THE COURT: Is there anything about either your
3 depression or the treatment that you received that would affect
4 your ability to understand what is happening here today?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Are you now or have you recently been
7 under the care of a doctor or mental health professional?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Have you ever been treated or hospitalized
10 for any type of addiction, including drug or alcohol addiction?

11 THE DEFENDANT: I was treated for cannabis addiction.

12 THE COURT: Is there anything about your cannabis
13 addiction or the treatment that you have received that would
14 affect your ability to understand what is happening here today?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: In the last 48 hours have you taken any
17 medicine, pills, drugs or had any alcohol?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Is your mind clear today?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand what is happening here
22 today?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: Mr. Agnifilo, I assume you discussed this
25 matter with Mr. Davis?

IA5TDAVP

1 MR. AGNIFILO: Yes, very much so, Judge.

2 THE COURT: And in your judgment does he understand
3 the rights that he would be giving up by pleading guilty?

4 MR. AGNIFILO: He does, indeed.

5 THE COURT: In your judgment is he capable of
6 understanding the nature of today's proceedings?

7 MR. AGNIFILO: He does.

8 THE COURT: Do either counsel have my doubt as to the
9 defendant's competence to plead guilty at this time?

10 MR. AGNIFILO: I believe he's competent to do so.

11 MR. NEFF: No doubt, your Honor.

12 THE COURT: On the basis of Mr. Davis' responses to my
13 questions, my observations of his demeanor here in court and
14 the representations of counsel, I find that he is fully
15 competent to enter an informed plea of guilty at this time.

16 Mr. Davis, have you received a copy of the superseding
17 indictment, S1 13 Crim. 950, charging you with conspiracy to
18 violate the narcotics laws and other offenses?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And have you had enough time to review the
21 charge to which you intend to plead guilty and any possible
22 defenses to that charge with your lawyers?

23 THE DEFENDANT: Yes, I have.

24 THE COURT: Have your lawyers explained to you the
25 consequences of entering a guilty plea?

IA5TDAVP

1 THE DEFENDANT: Yes, they have.

2 THE COURT: And are you satisfied with their
3 representation of you?

4 THE DEFENDANT: I am.

5 THE COURT: Now I have here a written advice of rights
6 form that you appear to have signed, dated today, October 5th,
7 2018. I will mark this as Court Exhibit 1 and provide it to
8 the government to retain this its possession after this
9 proceeding.

10 Turning to page 2 of the form, is that your signature
11 appearing there on page 2?

12 THE DEFENDANT: Yes, it is.

13 THE COURT: Before you signed that form, did you read
14 it?

15 THE DEFENDANT: Yes, I did.

16 THE COURT: Before you signed it, did you discuss it
17 with Mr. Agnifilo?

18 THE DEFENDANT: Yes, I did.

19 THE COURT: And did he explain it to you and answer
20 any questions that you may have had about the form before you
21 signed it?

22 THE DEFENDANT: Yes.

23 THE COURT: I'm going go over many of the same things
24 that are on that form with you to ensure that you understand
25 what you are doing and the consequences of what you are doing.

IA5TDAVP

1 If there's anything you don't understand, please let me know.

2 Under the Constitution and laws of the United States,
3 you have a right to plead not guilty to the charges in the
4 superseding indictment. Do you understand that?

5 THE DEFENDANT: I do.

6 THE COURT: If you did plead not guilty you would be
7 entitled to a speedy and public trial by a jury on those
8 charges. Do you understand that?

9 THE DEFENDANT: I do.

10 THE COURT: At that trial you would be presumed to be
11 innocent and you would not have to prove that you were
12 innocent. Instead, the government would be required to prove
13 your guilt by competent evidence beyond a reasonable doubt
14 before a jury could find you guilty. Do you understand that?

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: In order to find you guilty, a jury of
17 twelve people would have to agree unanimously that you were
18 guilty. Do you understand that?

19 THE DEFENDANT: I do.

20 THE COURT: At that trial and at every stage of your
21 case you would be entitled to the assistance of a lawyer, and
22 if you could not afford a lawyer, one would be appointed at
23 public expense free of cost to represent you. Do you
24 understand that?

25 THE DEFENDANT: I do.

IA5TDAVP

1 THE COURT: During a trial the witnesses for the
2 government would have to come to court and testify in your
3 presence, and your lawyer would have an opportunity to
4 cross-examine those witnesses and object to any evidence
5 offered against you by the government. You would also have an
6 opportunity to introduce evidence on your own behalf, and you
7 would have the right to have subpoenas issued or other process
8 used to compel witnesses to come to court and testify in your
9 defense. Do you understand all that?

10 THE DEFENDANT: I do.

11 THE COURT: At the trial you would also have the right
12 to testify on your own behalf, but you would have the right not
13 to testify as well, and if you chose not to testify then no
14 one, including the jury, could draw any inference or suggestion
15 of guilt from the fact that you did not testify. Do you
16 understand that?

17 THE DEFENDANT: I do.

18 THE COURT: Before trial you would have the right to
19 obtain certain evidence and materials from the government, if
20 you have not already received them, and you would have an
21 opportunity and right to move to exclude or suppress that
22 evidence and prevent the government from using it against you.
23 Do you understand that?

24 THE DEFENDANT: I do.

25 THE COURT: If you were convicted at a trial you would

IA5TDAVP

1 have the right to appeal that verdict and any pretrial rulings
2 that I made in connection with your case. Do you understand
3 that?

4 THE DEFENDANT: I do.

5 THE COURT: If you plead guilty you will also have to
6 give up your right not to incriminate yourself because I may
7 ask you questions about what you did in order to satisfy myself
8 that you are guilty as charged, and you will have to admit and
9 acknowledge your guilt. Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: If you plead guilty, and if I accept your
12 guilty plea, you will give up your right to a trial and the
13 other rights that we have just discussed, other than your right
14 to a lawyer, which you keep whether or not you plead guilty.
15 But there will be no appeal with respect to whether you did or
16 did not commit the offense to which you're pleading guilty or
17 with respect to whether the government could use the evidence
18 that it has against you. And I would enter a judgment of
19 guilty and sentence you on the basis of your plea after I have
20 considered any presentence report and whatever submissions I
21 get from your lawyer and the lawyers from the government.
22 There would be no trial, and as I said, there would be no
23 appeal on the matters that I mentioned a moment ago.

24 Do you understand all that?

25 THE DEFENDANT: I do, your Honor.

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1 THE COURT: Even now as you are entering this plea you
2 have the right to change your mind, to plead not guilty and to
3 go to trial on the charges in the superseding indictment. Do
4 you understand that?

5 THE DEFENDANT: I do.

6 THE COURT: Do you understand each and every one of
7 the rights that I have just explained to you?

8 THE DEFENDANT: I do.

9 THE COURT: And are you willing to give you up your
10 right to a trial and the other rights that we have discussed?

11 THE DEFENDANT: I am.

12 THE COURT: Do you understand that you are charged in
13 Count One of the indictment with participating in a conspiracy
14 to distribute or possess with the intent to distribute various
15 controlled substances, including but not limited to one
16 kilogram and more of mixtures and substances containing a
17 detectable amount of heroin, and that is in violation of Title
18 21, United States Code, Section 846.

19 Do you understand that that is the charge in the
20 indictment itself?

21 THE DEFENDANT: Yes, I do.

22 THE COURT: Do you understand that the government has
23 agreed to accept a guilty plea to a lesser included offense,
24 namely conspiracy to distribute or possess with the intent to
25 distribute lesser quantities or unidentified quantities of

IA5TDAVP

1 various controlled substances, including heroin, but that's in
2 violation of the same provision. Do you understand that?

3 THE DEFENDANT: Yes, Judge.

4 THE COURT: Mr. Neff, would you please state the
5 elements of the offense to which Mr. Davis is pleading guilty?

6 MR. NEFF: Yes, your Honor. To prove the defendant
7 guilty of the lesser included offense to which the defendant is
8 pleading, the government would have to prove two elements
9 beyond a reasonable doubt: First, there existed an agreement
10 between two or more people to distribute some amount of
11 narcotics, as charged here, heroin, cocaine, LSD and
12 methamphetamine; and second, the defendant personally joined
13 that conspiracy understanding the illegal objective, in other
14 words, understanding that it was about distributing these
15 drugs.

16 In addition to those two elements, the government
17 would also need to prove by a preponderance of the evidence
18 that venue is appropriate here in the Southern District of New
19 York.

20 THE COURT: Thank you.

21 Mr. Davis, do you understand that if you were to go to
22 trial the government would have to prove each of those first
23 two elements beyond a reasonable doubt, and that venue is
24 proper here by a preponderance of the evidence, before a jury
25 could find you guilty?

IA5TDAVP

1 THE DEFENDANT: I do.

2 THE COURT: Let me tell you now about the maximum
3 possible penalties for this crime. By "this crime" I mean the
4 lesser included offense to which you're pleading guilty, and by
5 "maximum" I mean the most that could possibly be imposed upon
6 you. It doesn't mean that that is the sentence you will
7 receive, but you do have to understand that by pleading guilty
8 you are exposing yourself to a combination of punishments up to
9 the statutory maximums. Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: First let me tell you about the possible
12 restrictions on your liberty. The maximum term of imprisonment
13 for this crime is 20 years, which could be followed by up to a
14 lifetime term of supervised release. "Supervised release"
15 means that you would be subject to supervision by the probation
16 department, there would be rules of supervised release that you
17 would be required to follow, and if you violated those rules
18 you could be returned to prison to serve additional time
19 without a jury trial and without credit for the time spent on
20 your underlying sentence or time spent on post-release
21 supervision. Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: You should understand that there is no
24 parole in the federal system, which means that if you were
25 sentenced to prison you would not be released early on parole.

IA5TDAVP

1 There is an opportunity to earn credit for good behavior, but
2 if you were sentenced to prison you would have to serve at
3 least 85 percent of the time to which you were sentenced. Do
4 you understand that?

5 THE DEFENDANT: I do.

6 THE COURT: In addition to those restrictions on your
7 liberty, the maximum possible punishments also includes certain
8 financial penalties: First, the maximum allowable fine is the
9 greatest of one million dollars, twice the gross pecuniary or
10 financial gain derived from the offense or twice the gross
11 pecuniary or financial loss to someone than you as a result of
12 the offense; second, I can order restitution to any person or
13 entity injured as a result of your criminal conduct; third, I
14 can order you to forfeit all property derived from the offense
15 or used to facilitate the offense. And on that score, I note
16 that in the plea agreement we will discuss shortly you admit to
17 forfeiture allegation with respect to Count One of the
18 indictment. And finally, I must order a mandatory special
19 assessment of \$100.

20 Do you understand that those are the maximum possible
21 penalties?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: In addition to understanding those maximum
24 penalties, you should understand that there is a mandatory
25 minimum of three years of supervised release. That means that

IA5TDAVP

1 absent a motion by the government, I would be required to
2 impose at least a three-year term of supervised release
3 following any term of imprisonment. Do you understand that
4 that is the mandatory minimum that applies here?

5 THE DEFENDANT: I do.

6 THE COURT: Are you a citizen of the United States,
7 Mr. Davis?

8 THE DEFENDANT: I'm not.

9 THE COURT: Do you understand that as a result of your
10 guilty plea there may be adverse affects on your immigration
11 status in this country? For example, you may be detained by
12 the immigration authorities following the completion of any
13 criminal sentence, you may be denied admission to the United
14 States in the future, you may be denied citizenship in the
15 United States, and you may be removed or deported from the
16 United States.

17 Do you understand those are among the negative
18 immigration consequences of a guilty plea? Do you understand
19 that?

20 THE DEFENDANT: I do.

21 THE COURT: Have you discussed the immigration
22 consequences of a guilty plea with your lawyers?

23 THE DEFENDANT: I have.

24 THE COURT: Do you understand that as a result of a
25 guilty plea you may also lose certain valuable civil rights in

IA5TDAVP

1 this country, to the extent that you have them or could
2 otherwise obtain them now, such as the right to vote, the right
3 to hold public office, the right to serve on a jury and the
4 right to possess any kind of firearm?

5 THE DEFENDANT: I do.

6 THE COURT: Are you serving any other sentence or
7 being prosecuted in any other court at this time?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Do you understand that if your lawyers or
10 anyone has attempted to predict for you what your sentence will
11 be in this matter that their predictions could be wrong?

12 THE DEFENDANT: I do.

13 THE COURT: You should understand that no one, not
14 your lawyers, not the lawyers from the government, no one can
15 give you any promise or assurance as to what your sentence will
16 be in this matter because your sentence will be determined by
17 me and by me alone. I will not do that today. Instead, I will
18 wait until I receive the presentence report prepared by the
19 probation department, I will do my own calculation of how the
20 United States Sentencing Guidelines apply to your case, I will
21 consider any applicable departures from the guidelines range, I
22 will consider the submissions by the lawyers, and I will
23 consider the factors set forth in a statute that governs
24 sentencing, Title 18, United States Code, Section 3553(a), and
25 I will do all that before determining and imposing an

IA5TDAVP

1 appropriate sentence. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Have you discussed the sentencing process
4 with your lawyers?

5 THE DEFENDANT: I have.

6 THE COURT: Even if your sentence is different from
7 what your lawyers or anyone else has told you that it might be,
8 even if it is different from what you expect or hope it to be,
9 and even if it is different from what may be in the plea
10 agreement we will discuss in one moment, you will still be
11 bound by your plea and you will not be allowed to withdraw your
12 plea. Do you understand that?

13 THE DEFENDANT: I do.

14 THE COURT: Now I understand that there is a written
15 plea agreement between you and the lawyers for the government
16 as well as your lawyer, is that correct?

17 THE DEFENDANT: That's right.

18 THE COURT: I have the original letter plea agreement
19 here dated September 20, 2018, from Assistant U.S. Attorneys
20 Choi and Neff to your lawyers, Mr. Klein, Mr. Agnifilo and
21 Mr. Kaplan. I will mark this as Court Exhibit 2 and provide it
22 to the government to retain in its possession after this
23 proceeding as well.

24 Turning to the last page of the plea agreement, you
25 appear to have signed this document dated today as well, and

IA5TDAVP

1 I'm showing that to you. Is that your signature on the last
2 page?

3 THE DEFENDANT: It is.

4 THE COURT: Before you signed the plea agreement, did
5 you read it?

6 THE DEFENDANT: Yes, I did.

7 THE COURT: And before you signed it did you discuss
8 it with your lawyer?

9 THE DEFENDANT: I did.

10 THE COURT: Before you signed it did your lawyers
11 explain it to you and answer any questions that you may have
12 had about it?

13 THE DEFENDANT: Yes, they did.

14 THE COURT: Before you signed it, did you fully
15 understand it?

16 THE DEFENDANT: I did.

17 THE COURT: All right. Mr. Neff, I see there's a
18 footnote at the end of the plea agreement indicating that the
19 agreement reflects special facts of this case is not intended
20 as precedent for other cases. Can you just advise me so I
21 don't miss something what differences there are from sort of
22 the standard plea agreement in this district?

23 MR. NEFF: Certainly, your Honor. May I have one
24 moment?

25 THE COURT: Yes.

IA5TDAVP

1 MR. NEFF: Thank you.

2 (Pause)

3 MR. NEFF: Thank you, Judge.

4 Two things. First, the government's offer of a lesser
5 included (b)(1)(C) plea offer, notwithstanding the fact that
6 certain other defendants in the broader conspiracy were
7 convicted of the (b)(1)(A) quantities; and second, it reflects
8 the fact that the defendant was extradited from Ireland.

9 THE COURT: All right. Thank you.

10 Mr. Davis, one of the features of your plea agreement
11 is that you and the government have agreed upon how the United
12 States Sentencing Guidelines apply to your case, is that
13 correct?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: You should understand that that agreement
16 is binding on you and it is binding on the government but it is
17 not binding on me. I have my own independent obligation to
18 determine the correct guidelines range. I'm not suggesting to
19 you that I will come up with a different calculation than the
20 one to which you have agreed, but I could, and even if I did,
21 you would still be bound by your guilty plea and you would not
22 be allowed to withdraw your plea. Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: In addition, your plea agreement includes
25 a waiver of appeal, that is, you waive or give up your right to

IA5TDAVP

1 appeal or otherwise challenge any sentence that is within or
2 below the stipulated sentencing guidelines range of 235 to 240
3 months in prison. That means that if I sentence you to 240
4 months imprisonment, which is the statutory maximum, or
5 anything less than that, you would not have any right to appeal
6 or otherwise challenge that sentence. Do you understand that?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Does this written plea agreement
9 constitute your complete and total understanding of the entire
10 agreement between you and the government in this case?

11 THE DEFENDANT: It does, your Honor.

12 THE COURT: Has anything been left out of the written
13 plea agreement?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Other than what is written in the
16 agreement, has anyone made any promise to you or offered you
17 any inducement either to plead guilty or to sign the plea
18 agreement?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Has anyone threatened you or forced you to
21 plead guilty or to sign the plea agreement?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Has anyone made a promise to you as to
24 what your sentence will be in this matter?

25 THE DEFENDANT: No, your Honor.

IA5TDAVP

1 THE COURT: Mr. Davis, I would like you now to tell me
2 in your own words what you did that makes you believe you are
3 guilty to crime to which you are pleading.

4 THE DEFENDANT: Yes, your Honor. I have a prepared
5 statement, if I could read this.

6 THE COURT: Yes, as long as you read slowly and
7 clearly into the microphone, please.

8 THE DEFENDANT: Thank you. Between January of 2011
9 and October 2013 I was associated with a website called the
10 Silk Road. My job with the Silk Road consisted primarily of
11 helping the site run smoothly and without problems. I would
12 provide customer support to users of the site having problems
13 accessing their accounts or if they had issues with their funds
14 being credited.

15 I knew that the Silk Road facilitated the buying and
16 selling of illegal drugs, including heroin, cocaine, LSD, and
17 methamphetamines. Additionally, I knew that by helping people
18 navigate the Silk Road site and by helping the site run
19 smoothly I was assisting in the distribution of these illegal
20 substances, and that I agreed with others to do so.

21 While I was not in the United States while I engaged
22 in this activity, I knew that these illegal substances were
23 being distributed throughout the United States, including
24 within the Southern District of New York. I knew and admit
25 that my actions violated the drug laws of the United States. I

IA5TDAVP

1 plead guilty to the crime of conspiracy to distribute these
2 illegal substances because I'm guilty of this crime.

3 THE COURT: All right. Thank you.

4 Mr. Agnifilo, do you know of any valid defense that
5 would prevail at trial or any reason that Mr. Davis should not
6 be permitted to plead guilty to the lesser included offense?

7 MR. AGNIFILO: I do not, your Honor.

8 THE COURT: Mr. Neff, are there any additional
9 questions that you would like me to ask of Mr. Davis?

10 MR. NEFF: No, your Honor.

11 THE COURT: Would you please proffer briefly what the
12 government's evidence would be and what it would show if the
13 defendant were to go to trial.

14 MR. NEFF: Yes, your Honor. If this matter proceeded
15 to trial the government's evidence would include, among other
16 things, exhibits introduced at the trial of Ross Ulbricht,
17 testimony from witnesses, seizures of drugs that had been
18 purchased on Silk Road, controlled buys of narcotics over Silk
19 Road. And on that front, I would note that some of these
20 controlled buys or undercover purchases were ordered from and
21 delivered to the Southern District of New York.

22 Our evidence would also include Silk Road servers,
23 including the servers for the Silk Road marketplace, forum, and
24 the Bitcoin server. The evidence would also include pertinent
25 materials from Ross Ulbricht's laptop, which includes chats,

IA5TDAVP

1 his journal and materials identifying his employees, including
2 Mr. Davis' passport.

3 The evidence would also include electronic search
4 warrant returns showing that aliases used on Silk Road belonged
5 to this defendant. And finally, the evidence would include
6 this defendant's statements at a proffer session conducted
7 pursuant to a safety valve proffer agreement.

8 THE COURT: All right. And forgive me for one moment,
9 is there a safety valve provision in the plea agreement?

10 MR. NEFF: There is not, your Honor.

11 THE COURT: All right. Then I didn't overlook it.

12 All right. Do both counsel agree there is a
13 sufficient factual basis for a guilty plea to the lesser
14 included offense?

15 MR. NEFF: Yes, your Honor.

16 MR. AGNIFILO: Yes, your Honor.

17 THE COURT: And does either counsel know of any reason
18 that I should not accept the defendant's plea of guilty?

19 MR. NEFF: No, your Honor.

20 MR. AGNIFILO: I know of no such reason.

21 THE COURT: Mr. Davis, because you acknowledge that
22 you are in fact guilty as charged, or at least with respect to
23 the lesser included offense of Count One of the superseding
24 indictment, because I am satisfied that you know of your
25 rights, including your right to go to trial, that you are aware

IA5TDAVP

1 of the potential consequences of your plea, including the
2 sentence that could be imposed upon you, and because I find
3 that you are knowingly and voluntarily pleading guilty, I
4 accept your guilty plea and enter a judgment of guilty on the
5 lesser included offense to Count One.

6 The probation department will want to interview you in
7 connection with its preparation of the presentence report that
8 I mentioned earlier. If you choose to speak with the probation
9 department, it is important that anything you say is truthful
10 and accurate. Among other things, that report is very
11 important to me in deciding what sentence to impose upon you.

12 Before sentencing, you and your lawyers will have an
13 opportunity to review the report. I would urge you to review
14 it with care, and if you find any mistakes in the report or
15 anything that you wish to bring to my attention in connection
16 with sentencing that you share that with your lawyers so that
17 they can bring it to my attention in the appropriate manner.

18 Do you understand all that?

19 THE DEFENDANT: I do. Thank you, your Honor.

20 THE COURT: Mr. Agnifilo, do you wish to be present
21 for any interview by probation?

22 MR. AGNIFILO: Yes. Thank you, Judge.

23 THE COURT: I order no interview take place unless
24 counsel is present.

25 Sentencing will be set for January 17, 2019 at 3:30 in

IA5TDAVP

1 the afternoon. I direct the government to provide its factual
2 statement of the offense to probation within seven days.
3 Defense counsel must arrange for the defendant to be
4 interviewed by the probation department within the next two
5 weeks.

6 In accordance with my individual rules and practices,
7 any defense submissions for sentencing are due two weeks prior
8 to the sentencing date, the government's submissions are due
9 one week prior to the sentencing date. I am guessing that you
10 will each submit substantive sentencing submissions here, but
11 in the unlikely event that you don't, you should at least file
12 a letter to that effect so that we know that we didn't overlook
13 something.

14 Anything else?

15 MR. NEFF: No, your Honor, thank you.

16 MR. AGNIFILO: Nothing from the defense. Thank you,
17 your Honor.

18 THE COURT: All right. In that case, we are
19 adjourned. I wish everybody a pleasant weekend.

20 MR. NEFF: Thank you, your Honor, you too.

21 MR. AGNIFILO: Thank you.

22 (Adjourned)
23
24
25